

Union Carbide India Limited and Others

Vs

Union of India and Others

I.A. Nos.16 and 17 of 1992 in Civil Appeals Nos. 3187 and 3188, of 1988

(M. N. Venkatachaliah, G. N. Ray JJ)

16.10.1992

ORDER

1. The Union of India has moved these two applications in the two disposed of appeals. The applications relate to the administration of what may be referred to as the Bhopal Gas Leak Disaster Settlement Fund, now held with the Reserve Bank of India in the name of the Registrar of the Supreme Court of India, pursuant to the orders of this Court. The Fund consists of 420 Million US Dollars and about Rs. 68 crores deposited by the Union Carbide Corporation pursuant to the Court-negotiated settlement dated 14th and 15th February, 1989, arrived at in the appeals together with interest accruing thereon. The Fund also consists of certain remittances to the fund by the Red Cross Organisations representing the unspent balance of 5 Million US dollars.

2. The prayer in these applications is that the accounts respecting the fund with the Reserve Bank of India which have been held in the name of the Registrar of Supreme Court of India for over three and half years must now be transferred to and held and administered by the Welfare Commissioner appointed under the provisions of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. The prayer is opposed by certain victim groups.

3. We have heard learned Attorney General for the Union of India and Shri Shanti Bhushan, learned Senior Counsel or the "Bhopal Gas Peedit Mahila Udyog Sanga than".

Learned Attorney General submits that the Fund continued to remain in Court as the settlement itself was challenged in certain proceedings in review and that after the settlement was upheld in the Review Petitions it is appropriate that the Fund should now be held and administered by the concerned Statutory Authority and that, accordingly, the accounts be transferred to the Welfare Commissioner. Learned Attorney General adds that the Fund was not intended to be administered directly by the Supreme Court for the benefit of the victims and the Scheme framed under the Act should be allowed to work itself out in accordance with law.

4. Shri Shanti Bhushan, however, urged that the 'Act' does not envisage and provide for an independent judicial adjudication of disputed claims; that the Welfare Commissioner, though a Judge, is required, in relation to the distribution and apportionment of the fund amongst the claimants, acts under the directions of the Central Government, and that, therefore, the protection of the interests and the legal rights of the victims could only be ensured by this Court alone maintaining a proper supervision, not only of the adjudication and determination of compensation but also of its actual disbursement. Learned counsel submitted that this, indeed, was the reason why

the control over the fund was retained by this Court. Shri Shanti Bhushan also contended that the requirement that there ought to be a determination of the claims of the victims by an independent judicial authority was never intended to be nor in fact substituted by the provisions of the Act and that for all intents and purposes the suit brought by the Union of India against Union Carbide Corporation in so far as it pertains to the question of the actual determination of the quantum of compensation in respect of the victims or victim-groups still survived and this Court alone would be competent either to adjudicate the matter itself or cause such adjudication to be done by an appropriate judicial agency. Shri Shanti Bhushan further urged that the provisions of the Act which merely contemplated the function of the distribution or apportionment of amount received from the tort-feasors amongst the victims do not square with the pronouncement of this Court that if, upon final determination of all claims, the settlement fund is found inadequate the Union Government would be liable to make good the shortfall.

Learned Attorney-General, however, sought to maintain that the 'Act' contemplates and provides for a quasi-judicial determination of disputed claims and that the powers of the adjudicatory agency set up under the 'Act' and the 'scheme' promulgated thereunder would, of course, be required to be construed in the light of the pronouncement of this Court in the Review Petitions and on the petition which had assailed the constitutional validity of the 'Act'.

5. On a consideration of the matter, we think that the contentions raised by Shri Shanti Bhushan are such as might require to be gone into in a substantive independent proceedings and not in the context of the directions sought in these applications. The mere fact that the Fund is transferred from the name of the Registrar of this Court to the Welfare Commissioner would not, by itself, bring about any change in the true legal position to the detriment of the victims. Whatever is the legal position on the questions touched by Shri Shanti Bhushan in the course of his submissions would continue to operate whether the accounts with the Reserve Bank of India stand in the name of the Registrar or in the name of the Welfare Commissioner. The change would not affect or bring about any diminution in the rights of the victims. Such areas as Shri Shanti Bhushan has traversed may have to be gone into if appropriately raised in appropriate substantive proceedings. We abstain from any comments on their merits.

6. For the present, however, there is no specific purpose or justification to continue to retain the funds in the name of the Registrar of this Court and, accordingly, there seems no impediment in the way of substituting the name of the Welfare Commissioner in the relevant accounts of the Reserve Bank of India, in place of the Registrar of this Court. Indeed, the stand of the State of Madhya Pradesh is also that the funds be so transferred to the Welfare Commissioner.

We, accordingly, permit the substitution of the name of the Welfare Commissioner in place of the Registrar, Supreme Court of India, in the accounts with the Reserve Bank of India subject to the conditions hereafter set out.

7. The transfer shall be strictly subject to the following conditions :

- (i) That no part of this Fund shall be withdrawn or utilised to meet any administrative expenses or diverted for any purpose other than payment to or applied in satisfaction of the claims of the victims towards compensation determined according to law. The Fund may also be utilised for payment of insurance premia as the scheme of insurance indicated in the Review order.

(ii) No part of the Fund shall either be appropriated towards payment of any interim relief in future or applied for reimbursement of such interim relief already granted. This will not come in the way of Government deducting the interim relief from the compensation finally determined, as indicated in the earlier order of this Court.

(iii) No part of the Fund shall be released by the Reserve Bank of India except upon a certificate from the Welfare Commissioner that the amount represents substantially the quantum of the compensation determined from time to time against the claims of the victims. The withdrawal or release of the funds from the account from time to time shall broadly, though not mathematically, correspond to the quantum of compensation actually determined from time to time.

(iv) The transfer of the accounts from the Registrar of this Court to the Welfare Commissioner shall not bring about any change in the initial conditions of the deposits, in particular those contained in the letter dated 14-3-1989 from the Reserve Bank of India to the Registrar, Supreme Court of India.

(v) In particular, wherever any withdrawal is made from the dollar deposit or sums representing that deposit, the benefit of the dollar/rupee exchange rate as prevailing on the date of actual withdrawal shall continue to be available and such exchange rates at the time of actual withdrawal (or the exchange rate as on the date of initial deposit whichever is higher) shall be applied. The expression "material-date" clause (c) of the prayer column in I.A. Nos. 16 and 17 of 1992 shall be construed accordingly.

All these conditions shall be binding upon the Reserve Bank of India.

8. Shri Shanti Bhushan submitted that while withdrawing funds the rupee deposit and the amounts representing accrued interest, should be utilised and progressively exhausted so that the benefit of any prospect of higher exchange rate of dollar may be preserved. Shri Shanti Bhushan said that this would protect the interests of the victims in the event of increase in the exchange rate of the dollar. We accept this submission and direct that whenever monies are withdrawn the rupee component shall be first exhausted and only thereafter recourse be had to the dollar deposit or the Rupees fund representing that deposit.

9. Shri Shanti Bhushan submitted that a further condition is necessary that on each occasion of withdrawal of funds by the Welfare Commissioner, the matter should first be placed before this Court for approval. It is not necessary to impose this condition. The Welfare Commissioner holds a high judicial office and we have no doubt that the Welfare Commissioner will meticulously implement these conditions. It will be open to the victim groups, whenever they find that their interests are adversely affected to move this Court if valid grounds exist to examine any aspect of the administration of the funds. However, the Welfare Commissioner may file in this Court, for purposes of record a copy of the requisitions made to the Reserve Bank of India for release of funds as and when made.

10. Accordingly, we direct the Reserve Bank of India to substitute the name of the Welfare Commissioner, in his capacity as such, in the place of the Registrar, Supreme Court of India, in the concerned accounts in the Reserve Bank of India. I.A. Nos. 16 and 17 of 1992 are disposed of accordingly. Order accordingly.

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